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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,574	05/18/2004	Edward Almond	UDL1P063C1	6343

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APPLIED MEDICAL RESOURCES CORPORATION
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EXAMINER

SCHELL, LAURA C

ART UNIT	PAPER NUMBER
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3767

MAIL DATE	DELIVERY MODE
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12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/849,574

Applicant(s)

ALMOND ET AL.

Examiner

Laura C. Schell

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/18/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlson et al. (US Patent No. 5,820,600). Carlson discloses a seal for a laparoscopic port comprising a base (8) adapted to engage a cannula, the base including an axial aperture (Figs. 4-5b: 62, 116) for a surgical instrument (Fig. 4, 130 for example); a multiplicity of jaws (Figs. 5a and 5b; 110) mounted on the base, the jaws being moveable radially with respect to the aperture between an open position wherein the shaft of the surgical instrument may pass freely and the closed position wherein the jaws engage the shaft and provide a restraining force restraining radial movement of the shaft (Figs. 5a and 5b; col. 9, lines 53-67; col. 10, lines 1-19); and an actuator rotatable (element 50; Figs. 4-5b and col. 6, lines 1-8) to urge the jaws to move between said open position and said closed position.

In reference to claim 2, Carlson discloses that the jaws may be adjusted to engage a shaft having any diameter between pre-selected upper and lower limits (Figs. 5a and 5b).

In reference to claim 3, Carlson discloses that the jaws are moveable along guides on the carrier plate (col. 10, lines 9-12).

In reference to claim 4, Carlson discloses that the guides comprise channels between raised formations, tracks or runners (Figs. 5a and 5b).

In reference to claim 5, Carlson discloses that each jaw comprises a follower member adapted to be received in a respective guideway in an actuator arranged so that the rotation of the actuator causes radial movement of the jaw (figs. 4-5b).

In reference to claim 6, Carlson discloses that each guideway comprises an arcuate channel formed in the actuator, a projection or other follower being received in the channel (Figs. 4-5b).

In reference to claim 7, Carlson discloses that the channels have the configuration of parabolic curves (Figs. 4-5b).

In reference to claim 8, Carlson discloses a diaphragm adapted to contact the shaft of a surgical instrument extending through the aperture (Figs. 4-5b).

In reference to claim 10, Carlson discloses that the aperture of the jaws is continuously adjustable between maximum and minimum positions (Figs. 4-5b).

In reference to claim 11, Carlson discloses that the jaws may be fully opened or closed by a rotation through an angle of 30-180 degrees.

In reference to claim 12, Carlson discloses a multiplicity of shield members disposed on the proximal side of the diaphragm to prevent accidental damage to the diaphragm in use (Figs. 4-5b).

In reference to claim 13, Carlson discloses that the shield members are moveable radially between open and closed positions synchronously with the jaws (figs. 5a and 5b).

In reference to claim 14, Carlson discloses that each shield member is attached to a respective jaw (Figs. 4-5b).

In reference to claim 15, Carlson discloses that the shield members are interleaved to form a continuous barrier covering the diaphragm (Figs. 4-5b).

In reference to claim 16, Carlson discloses that each jaw member has two laterally extending shield members (Figs. 4-5b).

Claims 1, 2 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (EP Patent No. 0630660). Smith discloses a seal for a laparoscopic port (Figs. 8-10) comprising a base (240) adapted to engage a cannula, the base including an axial aperture (250) for a surgical instrument (248); a multiplicity of jaws mounted on the base (228a and 228b), the jaws being moveable radially with respect to the aperture between an open position wherein the shaft of the surgical instrument may pass freely and the closed position wherein the jaws engage the shaft and provide a restraining force restraining radial movement of the shaft (Figs. 9 and 10); and an actuator rotatable to urge the jaws to move between said open position and said closed position (Figs. 8-10; col. 12, lines 14-55).

In reference to claim 2, Smith discloses that the jaws may be adjusted to engage a shaft having any diameter between pre-selected upper and lower limits (Figs. 8-10).

In reference to claim 8, Smith discloses a diaphragm adapted to contact the shaft of a surgical instrument extending through the aperture (Figs. 8-10).

In reference to claim 9, Smith discloses that the diaphragm includes a lip (224), each jaw including a radially outwardly facing portion adapted to engage the lip so that the aperture of the diaphragm is forced to open as the jaws move to an open position (Figs. 9 and 10).

In reference to claim 10, Smith discloses that the aperture of the jaws is continuously adjustable between maximum and minimum positions (Figs. 8-10).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Schell whose telephone number is (571) 272-7881. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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LCS

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

Kevin C. Sirmons